

Proposed Rules Clean Copy
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RULES OF THE SUPREME JUDICIAL COURT

3:01 ATTORNEYS

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Section 1. Filing Requirements for Admission

1.1 *Admission by Written Examination.* Persons desiring admission to the bar of the Commonwealth by written examination shall apply by filing with the Clerk of the Supreme Judicial Court for the county of Suffolk:

- 1.1.1 Petition for Admission accompanied by the recommendation of a member of the bar of this Commonwealth or of any state, district or territory of the United States;
- 1.1.2 Applicant's Statement;
- 1.1.3 Authorization Form;
- 1.1.4 Law School Certificate;
- 1.1.5 Multistate Professional Responsibility Examination Score Report that sets forth a passing scaled score;
- 1.1.6 Two (2) Letters of Recommendation for Admission; and
- 1.1.7 Current Certificate(s) of Admission and Good Standing from the highest judicial court of each state, district, territory or foreign country to which the applicant is admitted, if applicable.

1.2 *Admission by Motion.* Persons desiring admission to the bar of the Commonwealth by motion, pursuant to Rule 3:01, Section 6.1 or 6.2, shall apply by filing with the Clerk of the Supreme Judicial Court for the county of Suffolk:

- 1.1.1 Petition for Admission accompanied by the recommendation of a member of the bar of this Commonwealth or of any state, district or territory of the United States;
- 1.1.2 Applicant's Statement;
- 1.1.3 Multistate Professional Responsibility Examination Score Report;
- 1.1.4 National Conference of Bar Examiners Request for Preparation of a Character Report;
- 1.1.5 Letters of Recommendation for Admission:
 - (a) *attorneys admitted in other states:* From three members of the bar of the Commonwealth or of the state, district or territory of prior admission, or of the bar of the state, district or territory where the applicant last resided; or
 - (b) *attorneys admitted in foreign countries:* From three members of the bar of the foreign jurisdiction and from two members of the bar of the Commonwealth;
- 2.1.1 Current Certificate(s) of Admission and Good Standing from the highest judicial court of each state, district, territory or foreign country to which the applicant is admitted;
- 2.1.2 Letter from each state, district, territory's or foreign country's grievance or disciplinary entity indicating that there are no charges pending against the applicant;
- 2.1.3 Proof of active practice or teaching of law for five out of the past seven years immediately preceding the filing of petition for admission on motion; and
- 2.1.4 A letter from a judge of one of the courts in the jurisdiction to which the applicant is admitted (*optional*).

1.3 *Referral to Board of Bar Examiners.* All petitions for admission shall be referred to the Board of Bar Examiners for a report as to the character, acquirements and qualifications of the applicant.

Section 2. Bar Examination

2.1 *Time and Place.* Law examinations shall be held at least twice a year in Massachusetts. The Board shall fix the times and places of the examinations and shall give due notice thereof.

Section 3. Qualifications for Taking Bar Examination

3.1 *High School.* Each applicant for admission by examination shall have been graduated from a public day high school or its equivalent, or shall have received the equivalent education in the opinion of the Board.

3.2 *College.* Each applicant shall have completed the work acceptable for a bachelor's degree in a college or university, or have received an equivalent education in the opinion of the Board.

3.3 *Law School.* Each applicant shall have graduated with a degree of bachelor of laws or juris doctor from a law school which, at the time of graduation, is approved by the American Bar Association or is authorized by statute of the Commonwealth to grant the degree of bachelor of laws or juris doctor.

3.4 *Foreign Law Schools.* Any applicant who received his/her legal education at a law school located outside any state, district, or territory of the United States shall have pre-legal education equivalent, in the Board's opinion, to that set forth in subsections 3.1 and 3.2 and legal education equivalent, in the Board's opinion, to that provided in law schools approved by the American Bar Association. Before permitting such an applicant to take the law examination, the Board in its discretion may, as a condition to such permission, require such applicant to take such further legal studies as the Board may designate at a law school approved by the American Bar Association. See Board of Bar Examiners' Rule VI - Foreign Education Equivalency Standards

3.5 *Exclusion.* Subsection 3.1 to 3.4 shall not apply to applicants who have heretofore been examined under eligibility rules previously in force. To these applicants, the rules in force at their first examination shall apply.

Section 4. Public Notice of Bar Examination Results

4.1 *Notice and Publication.* Before the Board of Bar Examiners reports to the Court on the character, acquirements, and qualifications of an applicant for admission, the Board shall prepare a list of names of those applicants who passed the written law examination (under Rule 3:01, § 3) and who, if no objection is made, may be recommended to the Supreme Judicial Court for admission.

A copy of the list of names shall be sent to the Clerk of the Supreme Judicial Court for Suffolk County and the clerk of courts for each county who shall post the list in a public place for a period of seven days from a date fixed by the Board of Bar Examiners.

A copy of the list of names shall be sent to the Board of Bar Overseers, to the Massachusetts Bar Association, to the Boston Bar Association and such other bar associations and newspapers in the Commonwealth as the Board of Bar Examiners may determine.

4.2 *Report to the Court.* Not sooner than ten days after the date fixed for posting by the Board of Bar Examiners, the Board may report to the Supreme Judicial Court the names of those applicants then found qualified for admission under § 3.

Section 5. Disposition of Petitions for Admission

5.1 *Qualified Applicants.* The petitions for admission of those who pass the law examination and who are found by the Board of Bar Examiners to be of good moral character and of sufficient acquirements and qualifications may be allowed and the applicants may be admitted either (a) in open court upon subscription to the attorney's oaths, at such times and places as the Supreme Judicial Court shall appoint, or (b) by mail in accordance with procedures established by the Supreme Judicial Court and administered by the Clerk of the Supreme Judicial Court for Suffolk County.

5.2 *Admissions of Qualified Applicants within a Limited Time.* Except as otherwise ordered by a Justice of the Supreme Judicial Court, a qualified applicant for admission may be sworn and enrolled as an attorney within one year of the report to the Court (Rule 3:01, subsection 4.2) concerning the applicant, and, if not so sworn and enrolled, the applicant may, thereafter be sworn and enrolled only if he or she satisfies the Board of Bar Examiners as to his or her current legal knowledge, qualifications, and good moral character.

5.3 *Non-Qualified Applicants.* The petitions of those found not qualified shall be dismissed at the expiration of sixty days from the Board of Bar Examiners' report of non-qualification, unless within that period the Chief Justice of the Supreme Judicial Court, on application of the petitioner, shall order a hearing on the matter.

Section 6. Admission on Motion

6.1 *Attorneys Admitted in Other States.* A person who has been admitted as an attorney of the highest judicial court of any state, district or territory of the United States may apply to the Supreme Judicial Court for admission on motion as an attorney in this Commonwealth. Prior failure to pass the Massachusetts bar examination creates a rebuttable presumption against admission on motion. The Board of Bar Examiners may, in its discretion, excuse the applicant from taking the regular law examination on the applicant's compliance with the following conditions:

6.1.1 The applicant shall have been admitted in the other state, district or territory, for at least five years prior to applying for admission in the Commonwealth, and shall have engaged in the active practice or teaching of law for five out of the past seven years immediately preceding the filing of the petition for admission on motion.

6.1.2 The applicant shall have so engaged in the practice or teaching of law since the prior admission as to satisfy the Board of Bar Examiners of his or her good moral character and professional qualifications.

6.1.3 Omitted

6.1.4 The applicant shall have graduated from high school, or shall have received the equivalent education, in the opinion of the Board, completed work for a bachelor's degree at a college or university, or its equivalent, and graduated from a law school which at the time of graduation was approved by the American Bar Association or was authorized by a state statute to grant the degree of bachelor of laws or juris doctor.

6.1.5 The applicant shall pass the Multistate Professional Responsibility Examination if he or she has not previously passed that examination in another jurisdiction.

6.2 *Attorneys Admitted in Foreign Countries.* A person who has been admitted or enrolled as an attorney of the highest judicial court of a foreign country may apply to the Supreme Judicial Court to be admitted, without examination, as an attorney in this Commonwealth. The Board of Bar Examiners may, in its discretion, excuse the applicant from taking the regular law examination on compliance with the following conditions:

6.2.1 The applicant's principal residence is in the Commonwealth of Massachusetts.

6.2.2 The applicant shall have been admitted in the foreign country for at least five years prior to applying for admission in the Commonwealth, and shall have engaged in the active practice or teaching of law for five out of the past seven years immediately preceding the filing of the petition for admission on motion.

6.2.3 The applicant shall have completed the equivalent of American high school; shall have completed work in college or university equal to that warranting a bachelor's degree in the United States; and shall have completed such legal education as, in the opinion of the Board of Bar Examiners, is equivalent to that provided in law schools approved by the American Bar Association.

6.2.4 The applicant shall have so engaged in the practice or teaching of law since the prior admission as to satisfy the Board of Bar Examiners of his or her good moral character and professional qualifications.

6.2.5 Omitted

6.2.6 The applicant shall have passed the Multistate Professional Responsibility Examination.

6.3 *Notice and Publication for Admission under Section 6.* Before the Board of Bar Examiners reports to the Court on the character, acquirements, and qualifications of applicants for admission, the Board shall prepare a list of names of applicants who, if no objection is made, may be recommended to the Supreme Judicial Court for admission.

A copy of the list of names shall be sent to the Clerk of the Supreme Judicial Court for Suffolk County and the clerk of courts for each county who shall post the list in a public place for a period of seven days from a date fixed by the Board of Bar Examiners.

A copy of the list of names shall be sent to the Board of Bar Overseers, to the Massachusetts Bar Association, to the Boston Bar Association and such other bar associations and newspapers in the Commonwealth as the Board of Bar Examiners may determine.

6.4 *Report to the Court.* Not sooner than ten days after the date fixed for posting by the Board of Bar Examiners, the Board may report to the Supreme Judicial Court the names of those applicants then found qualified for admission under § 6.

6.5 *Time Limitation for Enrollment.* Except as otherwise ordered by a Justice of the Supreme Judicial Court, a qualified applicant may be sworn and enrolled as an attorney within one year of the report to the Court. Failure to be so sworn and enrolled will result in dismissal of the application.

Section 7. Bar Examiners' Rules

7.1 The Board of Bar Examiners may, subject to the approval of the Supreme Judicial Court, make rules consistent with these rules.

Section 8. Subpoenas

8.1 Any member of the Board of Bar Examiners may summon witnesses to appear before the Board.

RULES OF THE BOARD OF BAR EXAMINERS

(as authorized by Rules of the Supreme Judicial Court 3:01, § 7)

Rule I. Petitions and Certificates

Every applicant for admission to the bar who desires to take a law examination shall file a petition with the proper clerk of the court at least 75 days before the law examination which he/she intends to take, together with such certificates as the Board shall prescribe, giving information as to age, residence, character, and general and legal education and proof of passing the Multistate Professional Responsibility Examination. For good cause shown, the Chairman of the Board may allow petitions or certificates to be filed after the time fixed.

Rule II. Time and Place of Law Examinations

Law examinations shall be held at least twice a year in Boston, and in such other place or places, if any as the Board shall designate. The exact times and places shall be fixed by the Board and due notice thereof shall be given.

Rule III. Subjects under Rule 3:01, § 3.

Applicants will be expected to be familiar with the law in the following fields:

Agency	Federal Rules of Civil Procedure
Business Organizations	Massachusetts Rules of Civil Procedure
Constitutional Law	Professional Responsibility
Contracts	Real Property (including Mortgages)
Criminal Law	Torts
Descent & Distribution of Estates	Trusts
Domestic Relations	Unfair or Deceptive Practices (G.L.c. 93A)
Evidence (including Federal Rules)	Uniform Commercial Code (articles 1-9)
Federal Jurisdiction	Wills

The examinations will be conducted in part by written questions to be answered in writing and in part by printed questions to be answered by selections from answers supplied.

Rule IV. Applicants under Rule 3:01, § 6

Every applicant for admission as an attorney under Rule 3:01, § 6 of the Rules (Attorneys) of the Supreme Judicial Court shall obtain at his/her own expense and furnish to the Board a report by the National Conference of Bar Examiners of an investigation made by it of the moral character and professional experience and standing of such applicant. The Board may waive this requirement in any case in which it deems such a report to be unnecessary.

Rule V. Character and Fitness Standards of Admission Under Rule 3:01

V.1 Report On Character & Fitness:

Pursuant to Supreme Judicial Court Rule 3:01 the Board of Bar Examiners shall report to the Court as to the character, acquirements and qualifications of each candidate for admission who has passed the written bar examination or who has filed a motion application.

The Board considers good character to embody that degree of honesty, integrity and discretion that the public and members of the bench and the bar have the right to demand of a lawyer. The Board considers sufficient acquirements and qualifications to be those that are necessary to demonstrate a lawyer's fitness to practice law. In evaluating character and fitness, the Board takes into consideration all available pertinent information as to past conduct of the candidate. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of a candidate may constitute a basis for denial of a recommendation for admission. Engaging in any conduct which would have subjected the candidate to discipline if he/she had already been a member of the bar will weigh strongly against a determination of good character and fitness. There shall be a rebuttable presumption that nondisclosure of a material fact on the candidate's application(s) to the bar, law school or undergraduate school is prima facie evidence of the lack of good character.

The Board considers the following attributes to be essential for all applicants seeking admission to the Massachusetts bar:

The ability to reason, recall complex factual information and integrate that information with complex legal theories;

The ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;

The ability to use good judgment on behalf of clients and in conducting one's professional business;

The ability to conduct oneself with respect for and in accordance with the law;

The ability to avoid acts which exhibit disregard for the rights or welfare of others;

The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal;

The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others;

The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and

The ability to comply with deadlines and time constraints.

V.1.1 Relevant Conduct: The standards listed below should be used as guidance for candidates rather than a finite list of subjects considered by the Board. The revelation or discovery of information on any of the following will be treated as cause for further inquiry before the Board of Bar Examiners in deciding whether the candidate possesses the character and fitness to practice law:

- Unlawful conduct
- Academic misconduct
- Making of false statements, including omissions
- Misconduct in employment
- Acts involving dishonesty, fraud, deceit or misrepresentation
- Abuse of legal process
- Neglect of financial responsibilities
- Neglect of professional obligations
- Violation of a court order
- Evidence of mental or emotional instability
- Evidence of drug or alcohol dependency
- Denial of admission to the bar in another jurisdiction on character and fitness grounds
- Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

The Board shall determine whether the current character and fitness of a candidate qualifies the candidate for admission. In considering the factors listed above, the Board will consider the following:

- The candidate's age at the time of the conduct
- The amount of time since the conduct
- The reliability of the information concerning the conduct
- The seriousness of the conduct
- The cumulative effect of conduct or information
- The evidence of rehabilitation
- The candidate's positive social contributions since the conduct
- The candidate's candor in the admissions process
- The materiality of any omissions or misrepresentations.

V.1.2 Other Relevant Information: Until the attorney oath has been administered, candidates have a continuing duty to disclose promptly any changes that occur with respect to information given in response to questions in the application.

A candidate's failure or refusal to supply information deemed relevant by the Board or otherwise to cooperate with the Board may be grounds for denial of a recommendation for admission. Failure to respond in a timely manner, without good cause, to inquiries by the Board or to make a timely request for an extension of time to respond shall result in a declaration that the application for admission of the candidate has been abandoned.

V.1.3 Informal Oral Interview: When a candidate's record contains information that may cast doubt on his/her good character, he/she will be asked via written notice to appear before a member or members of the Board for an informal oral interview. The candidate will be given the opportunity to respond to the information and to demonstrate current good character and fitness. Following the interview, the Board will render a decision to either a) recommend the candidate for admission, or b) request additional information/action from the candidate, or c) request that the candidate appear for a formal hearing before the Board.

If the Board's decision is to recommend the candidate to the Court for admission, the Board will issue a report of qualification to the Court and notify the candidate. No further action will be taken on the applications of those whom the Board requests to supply additional information or take corrective action until after the Board's requests have been fulfilled. If the Board is unable to recommend the candidate to the Court for admission, the Board will provide the candidate with an opportunity for a formal hearing before the Board; establish the date, time and place of the hearing; and so notify the candidate.

V.2 Formal BBE Hearing Procedures: Formal hearings shall take place before members of the Board and be recorded by a stenographer. The candidate has the burden to convince the Board that it should recommend him or her to the Supreme Judicial Court for admission to the bar.

V.2.1 Notice of Hearing: A written notice shall be sent to the candidate requesting his or her appearance at a hearing before the Board of Bar Examiners. The notice shall contain the date, time and place of the hearing as well as the reason for the hearing. All hearings will take place at the offices of the Board of Bar Examiners unless otherwise designated.

V.2.2 Burden of Proof: The candidate shall have the burden to establish by clear and convincing evidence his or her current good character and fitness to be admitted to the practice of law in the Commonwealth.

Factors such as incarceration, probation, restrictions of parole still in effect, current unsatisfied judgments or unfulfilled sentences, while not determinative, generally are considered to indicate that the rehabilitation process has not been completed.

V.2.3 Investigation: Prior to a hearing, the Board may conduct a detailed investigation of facts and circumstances bearing on a candidate's character and fitness to practice law. A copy of any investigative report prepared for the Board shall be given to the candidate and his/her counsel.

V.2.4 Witnesses: The Board may authorize witness summonses either for counsel, for the Board or for the candidate.

V.2.5 Evidence: The candidate and counsel for the Board shall be provided the opportunity to present testimonial and documentary evidence at the hearing. Conformity to the legal rules of evidence shall not be necessary. The Board shall determine the admissibility, relevance and materiality of the evidence offered. Counsels for the Board and the candidate (or his/her counsel) have the right to call witnesses, request the issuance of witness summonses in accordance with V.2.4 and cross-examine witnesses. The Board shall have the discretion to question witnesses directly. The Board has the discretion to vary this procedure; provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

V.2.6 Testimony: All testimony shall be given under oath.

V.2.7 Report and Recommendation: Following the conclusion of the formal hearing, the Board shall make its

findings of fact and recommendation for or against the admission of the candidate. If the Board determines that it will recommend a candidate for admission, it shall file a report of qualification with the Clerk of the Supreme Judicial Court for Suffolk County and so notify the candidate. If the Board determines that it will not recommend a candidate for admission, it shall file a report of non-qualification with the Clerk of the Supreme Judicial Court for Suffolk County and notify the candidate.

V.2.8 Non-Qualified Candidates: Any candidate who is dissatisfied with the Board's recommendation concerning his or her character and fitness may, within sixty days after the Board's recommendation, request that the Chief Justice of the Supreme Judicial Court order a hearing on the matter. See S.J.C. Rule 3:01, Sec. 5.3.

V.3 Qualification:

The attorney oath will not be administered to any candidate prior to the Board of Bar Examiners' report of qualification to the court. In addition, qualification of a candidate may be revoked by the Board at any time prior to the administration of the oath on the receipt of information warranting further review.

The following are noteworthy Supreme Judicial Court decisions relevant to character and fitness:

Matter of Hiss, 368 Mass. 447 (1975)

Matter of Prager, 422 Mass. 86 (1996)

In Re Admission to Bar of Commonwealth, 431 Mass. 678 (2000)

In Re Admission to Bar of Commonwealth, 444 Mass. 393 (2005)

Rule VI. Standards for Determining Foreign Education Equivalency Under Rule 3:01

VI.1. Foreign Education Equivalency for Examination and Admission on Motion:

Graduates of the **common-law** faculties of law schools in foreign countries whose jurisprudence rests upon the common-law tradition (See VI.6. below for a special rule on Canadian law schools) may be permitted to sit for the general bar examination and apply for admission on motion upon obtaining a prior determination of their legal education equivalency from the Board of Bar Examiners.

Graduates of law schools in foreign countries whose jurisprudence rests upon the **civil-law** tradition may be permitted to sit for the general bar examination or apply for admission on motion upon obtaining a prior determination of their legal education equivalency from the Board of Bar Examiners. To get such a legal education equivalency the graduate will need to satisfy the same requirements and obligations in this Rule for graduates of law schools in foreign countries whose jurisprudence rests upon the common-law tradition, and also show a successful completion of a course of study at an ABA accredited Law School that is identical in all material respects to the JD course of study that such law school requires of its first year full-time law students.

VI.2. Request for Advanced Determination of Equivalency:

Except for those qualified by VI.6, at least four months prior to making application all foreign educated attorneys who wish to obtain a determination of their eligibility to apply for admission either by exam or admission on motion in Massachusetts must submit a cover letter that describes the action sought from the Board, the reason for the request, and the following documentation:

Documentation Required:

In order for the Board to determine equivalency, each foreign educated attorney shall supply the Board with the following documents written in or translated into English:

- a) Official Transcripts: An official transcript from every college, university and law school (foreign or American) attended; this must include the courses taken, the grade for each course, the degree and date awarded, and the dates of attendance;
- b) Diploma: Copies of all diplomas or degree certificates;
- c) Course Descriptions: Descriptions of all courses, if not included in the transcripts, along with the method of study, i.e. classroom or long distance learning, etc.;
- d) Certificate(s) of Admission: An official Certificate of Admission and Certificate of Good Standing from each jurisdiction to which the attorney is admitted; and
- e) Resume: A resume detailing work history.

This documentation will be retained by the Board.

VI.3. Determination of Educational Equivalency:

In making a determination of educational equivalency, the Board of Bar Examiners takes into consideration the following:

The jurisprudence in the country of the foreign law school

The course of study that was completed at the foreign law school as compared to that offered in a law school approved by the American Bar Association (ABA)

The attorney's pre-legal education as compared to that offered in a US high school and college or university

The attorney's license to practice law in either a foreign or American jurisdiction

The length and nature of prior legal practice or teaching, if any

The applicant's familiarity with the American constitutional, common and statutory legal systems

The applicant's successful completion of additional legal studies such as:

- i.) an LL.M. degree from an ABA accredited Law School [that includes courses in US constitutional law, federal courts and jurisprudence, uniform commercial code, American criminal law, American criminal procedures and legal professional responsibility]
- ii.) Transcripts from a course of study at an ABA accredited Law School that is identical in all material respects to the JD course of study that such law school requires of its first year full-time law students

VI.4. Method of Evaluation:

Each file is reviewed individually on its own merits. Upon completion of its review, the Board issues a determination that the foreign educated attorney a) must take further legal studies as the Board may designate at law school accredited by the ABA; or b) is eligible to apply to sit for the bar examination; or c) is eligible to apply for admission on motion provided all other requirements are met.

VI.5. Burden of Proof:

The attorney has the burden to demonstrate that he or she has obtained a legal education equivalent to a J.D. degree from a law school accredited by the American Bar Association.

VI.6. Appeals:

Attorneys who are dissatisfied with the Board's determination concerning his or her foreign legal education may write a letter to the Board requesting a reconsideration of its decision.

Information regarding the process of appeal to the Supreme Judicial Court may be obtained by contacting an assistant clerk in the Clerk's Office of the Supreme Judicial Court for Suffolk County.

VI.7. Canadian Law Schools:

Graduates of the common-law faculties of Canadian law schools that are members of the Law School Admissions Council shall be permitted to sit for the general bar examination on the same basis as graduates of law schools approved by the American Bar Association. A list of such law schools appears below:

Dalhousie University	University of Ottawa
McGill University	University of Saskatchewan
Queen's University	University of Toronto
University of Alberta	University of Victoria
University of British Columbia	University of Western Ontario
University of Calgary	University of Windsor Faculty of Law
University of Manitoba	York University- Osgoode Hall Law School
University of New Brunswick	

The following are Supreme Judicial Court decisions concerning foreign education equivalency:

Wei Jia v. Board of Bar Examiners, 427 Mass. 777 (1998)

Osakwe v. Board of Bar Examiners, 448 Mass. 85 (2006)

Yakah v. Board of Bar Examiners, 448 Mass. 740 (2006)